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No. _____

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IN THE SUPREME COURT OF
THE UNITED STATES

ALEXANDER L STEVAS,
CLERK

October Term, 1983

PASCUA YAQUI HOUSING AUTHORITY,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF ARIZONA,
In and For the County of Pima, the
Honorable James C. Carruth; and the
following real parties in interest:
TBI GENERAL CONTRACTORS, LTD., an
Arizona corporation, and MANDAN, INC.,
an Arizona corporation, collectively,
d/b/a MANDAN-TBI JOINT VENTURE, and
MTV GENERAL CONTRACTORS, INC., an
Arizona corporation,

Respondents.

On Petition for a Writ of
Certiorari To the Arizona Supreme
Court

Brief for Respondent Real Parties
in Interest in Opposition

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STATEMENT OF THE CASE

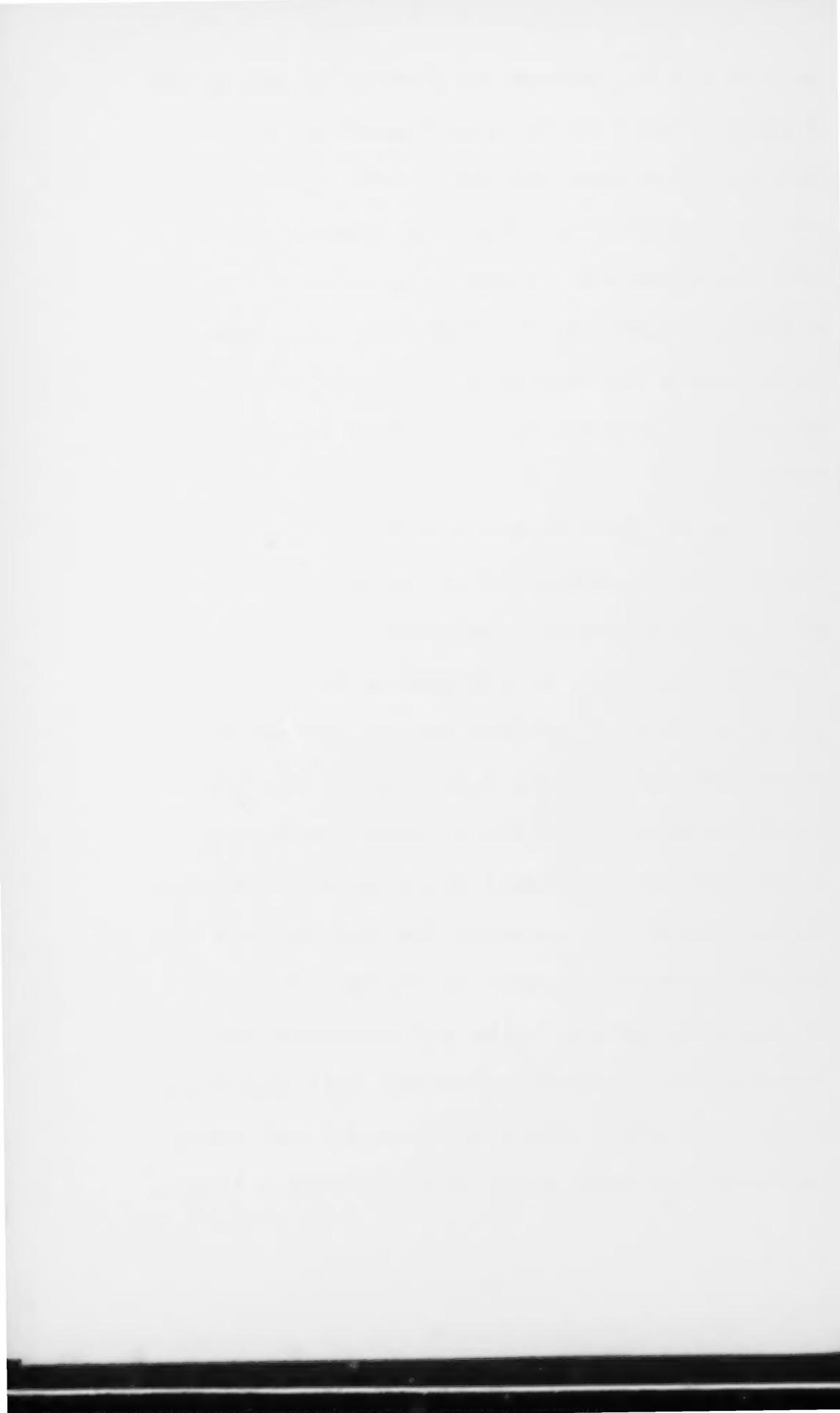
Respondents, real parties in interest, Mandan-TBI Joint Venture and MTV General Contractors, Inc., instituted an action in the Superior Court of the State of Arizona, Pima County, on July 15, 1983. (R.l Exh. A). This Complaint, alleging a breach of a construction contract, was brought to establish a claim for extra work requested by the Project Owner and Petitioner herein, the Pascua Yaqui Housing Authority.

Petitioner is a corporation created by Tribal Ordinance (R.l, Exh. E). The tribal ordinance is identical to the requirements set forth in 24 CFR § 805.110, Appendix 1. Regulations codified at 24 CFR §§ 805.101(a), et seq. govern the participation of Indian housing authorities generally in HUD financed housing programs. Pursuant to Article V of the Tribal Ordinance, the tribal council has granted the housing authority the power to sue and be sued in its corporate name. Petitioner responded to the complaint with a Rule 12(b),



Ariz.R.Civ.P., Motion to Dismiss alleging the Superior Court of Arizona lacked personal jurisdiction over the Petitioner and subject matter jurisdiction over the dispute. An additional matter raised in Petitioner's Motion to Dismiss, but apparently not asserted here, was a dispute as to the sufficiency of service of process upon the Petitioner. (R.1 Exh. C).

The matters were brief before the trial court and the arguments of counsel have become part of this record. Respondents, real parties in interest, in addressing Petitioner's claim of lack of subject matter jurisdiction cited the Court to 25 U.S.C. §1300(f). In enacting this legislation, Congress established the Pascua Yaqui tribe as a recognized Indian Tribe, and created the Pascua Yaqui Indian Reservation west of Tucson, Arizona. In recognizing the tribe and creating the reservation, Congress provided that the State of Arizona shall exercise criminal and civil jurisdiction over these Indian lands. After



hearing, at which all parties were represented, the Superior Court denied Petitioner's Motion. (R.1, Exh. G).

Petitioner then brought a special action under authority of A.R.S. § 12-120.21A(3) (extraordinary writ in the nature of prohibition). (R.1). In its petition for special action, Petitioner argued only the issue of subject matter jurisdiction. Petitioner did not contest, in its special action, the decision of the trial court relating to personal jurisdiction and service of process.

The Court of Appeals, State of Arizona, Division Two, on February 17, 1984, declined to accept jurisdiction in the matter and dismissed Petitioner's Petition for Special Action. (R.6).

On or about March 5, 1984, Petitioner sought review in the Supreme Court of the State of Arizona to the Court of Appeals' denial of its petition. (R.8). On April 24, 1984, the Arizona Supreme Court denied the Petition for Review. (R.12).



Petitioner now seeks the Court to issue a Writ of Certiorari to the Arizona Supreme Court.

SUMMARY OF ARGUMENTS IN OPPOSITION
TO PETITION FOR CERTIORARI

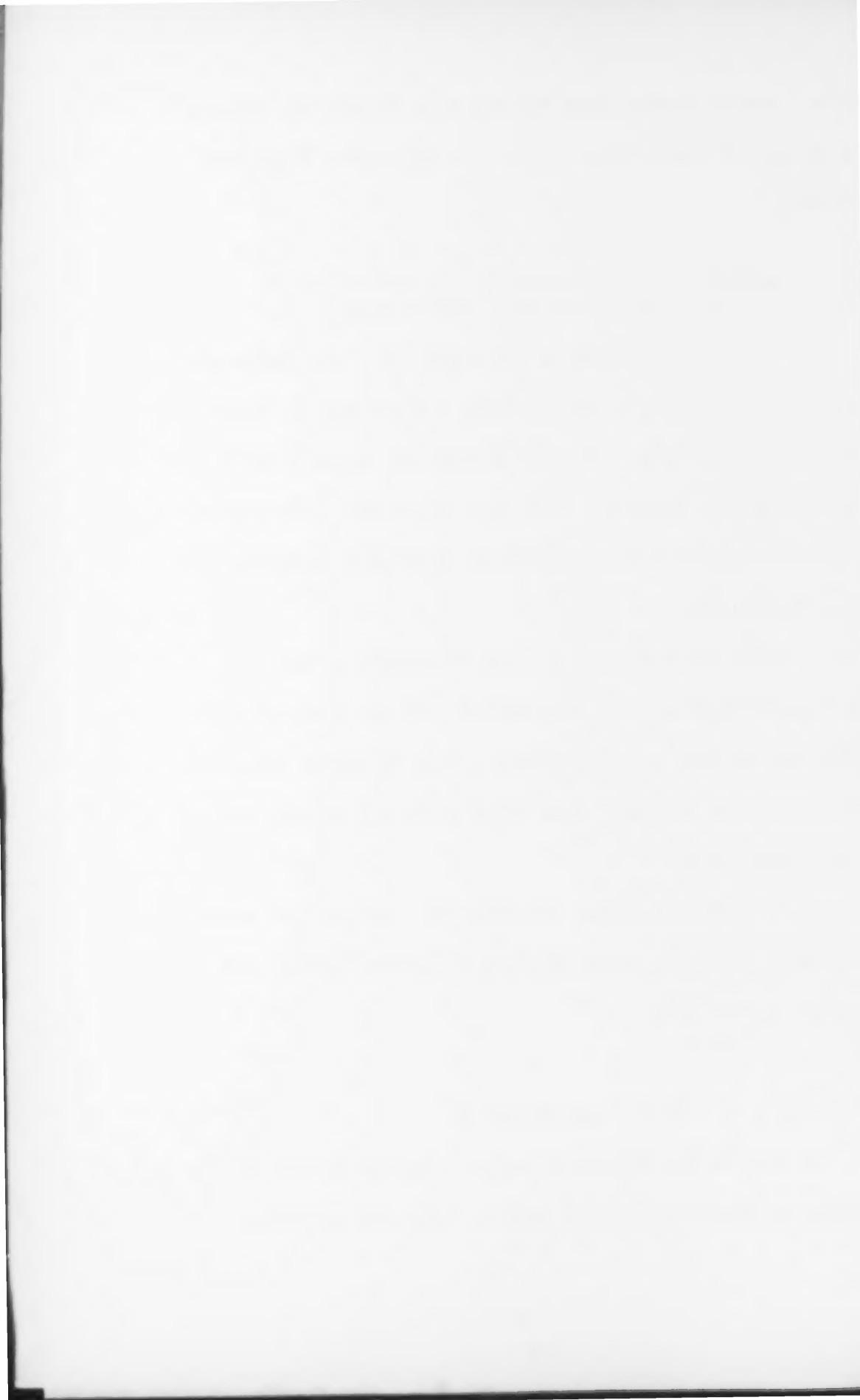
1. There exists no conflict in federal court of appeals decisions relating to state court assertion of jurisdiction over civil actions arising on Indian reservations where such jurisdiction has been expressly directed by Congress.

2. Decisions of the Supreme Court of Arizona declaring the substantive law of the State, which are binding upon federal courts, do not act to bar the exercise of state court jurisdiction.

3. Petitioner raises no issues of widespread concern justifying Supreme Court review.

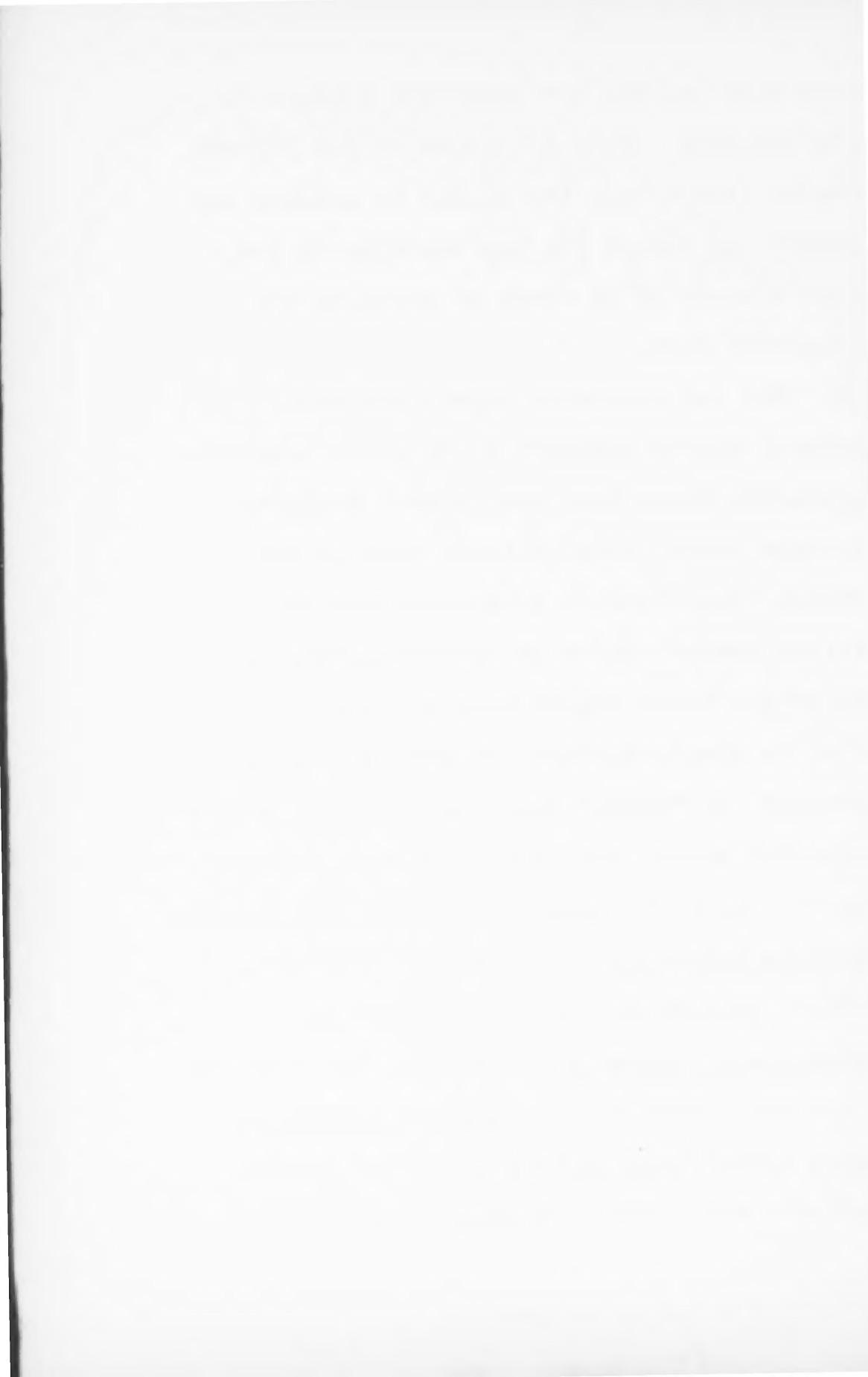
ARGUMENTS

The Writ of Certiorari being an extraordinary discretionary writ, the Petitioner



must show special and important reasons for its issuance. Rule 17, Rules of the Supreme Court. Petitioner has failed to present any compelling reason for the exercise of judicial discretion in favor of granting the requested writ.

Federal courts of appeal and lower federal courts addressing the issue have consistently found that contractual disputes between Indian corporations, such as the Pascua Yaqui Housing Authority, and non-tribal members raise no federal questions. Moreover, these courts have uniformly held that in simple contract actions between such parties, no federal court jurisdiction may be asserted absent the usual diversity requirements. R. J. Williams Company v. Fort Belknap Housing Authority, 719 F.2d 979 (9th Cir., 1983); Gila River Indian Community v. Henningson, Durham & Richardson. 626 F.2d 708 (9th Cir., 1980); R. C. Hedreen Company v. Crow Tribal Housing Authority, 521 F.Supp. 599 (D. Mont. 1981); Shubert Construction



Co., Inc. v. Seminole Tribal Housing Authority, 490 F.Supp. 1008 (S.D. Fla. 1980); Hickey v. Crow Tribal Housing Authority, 379 F.Supp. 1002 (D.S.D. 1974). Each case clearly supports Respondent's position that jurisdiction over the subject matter of this litigation lies in the non-federal arena.

This court has frequently outlined the standards governing state court assertion of jurisdiction over matters arising upon Indian lands. In Williams v. Lee, 358 U.S. 217, 221 (1959), noted that:

". . . when Congress has wished the states to exercise this power [civil and criminal jurisdiction over Indians] it has expressly granted them the jurisdiction which Worchester v. Georgia had denied." (Footnote omitted.)

Again, in McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 170-171 (1973), this court stated that:

"[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that state law shall apply"

See also: Washington v. Yakima Indian Nation,



439 U.S. 463 (1979); Bryan v. Itasca County,

426 U.S. 373 (1976).

The common principle uniformly applied in each of the foregoing cases is that jurisdiction over civil matters arising upon Indian land may not be established in state courts unless Congress expressly so provides. A clearer expression of such a grant than that contained in 25 U.S.C. § 1300f would be difficult to find:

" . . . the State of Arizona shall exercise criminal and civil jurisdiction . . . "

25 U.S.C. § 1300f(c).

The most recent pronouncement by the Ninth Circuit Court of Appeals, upon which Petitioner relies heavily, is not inconsistent with this position. The court in R. J. Williams Co. v. Fort Belknap Housing Authority, 719 F.2d 979 (9th Cir., 1983) did not appear to be presented with an express congressional grant of state court jurisdiction over the matters in dispute. Consequently, the court's decision was in accordance with



prevailing case law and the Williams v. Lee,
supra, principles.

Petitioner's suggestion that the State of Arizona has disclaimed jurisdiction over matters arising on the Pascua Yaqui Reservation is equally unsupportable. Petitioner argues that Article XX, paragraph 4, Constitution of the State of Arizona acts as a general disclaimer of jurisdiction. The Arizona Supreme Court, the state's highest tribunal, has determined that this constitutional provision disclaims only the state's proprietary interests and not its governmental interest in Indian lands. Porter v. Hall, 34 Ariz. 308, 271 Pac. 411 (1928).

This expression of substantive state law has been accepted by the federal courts.

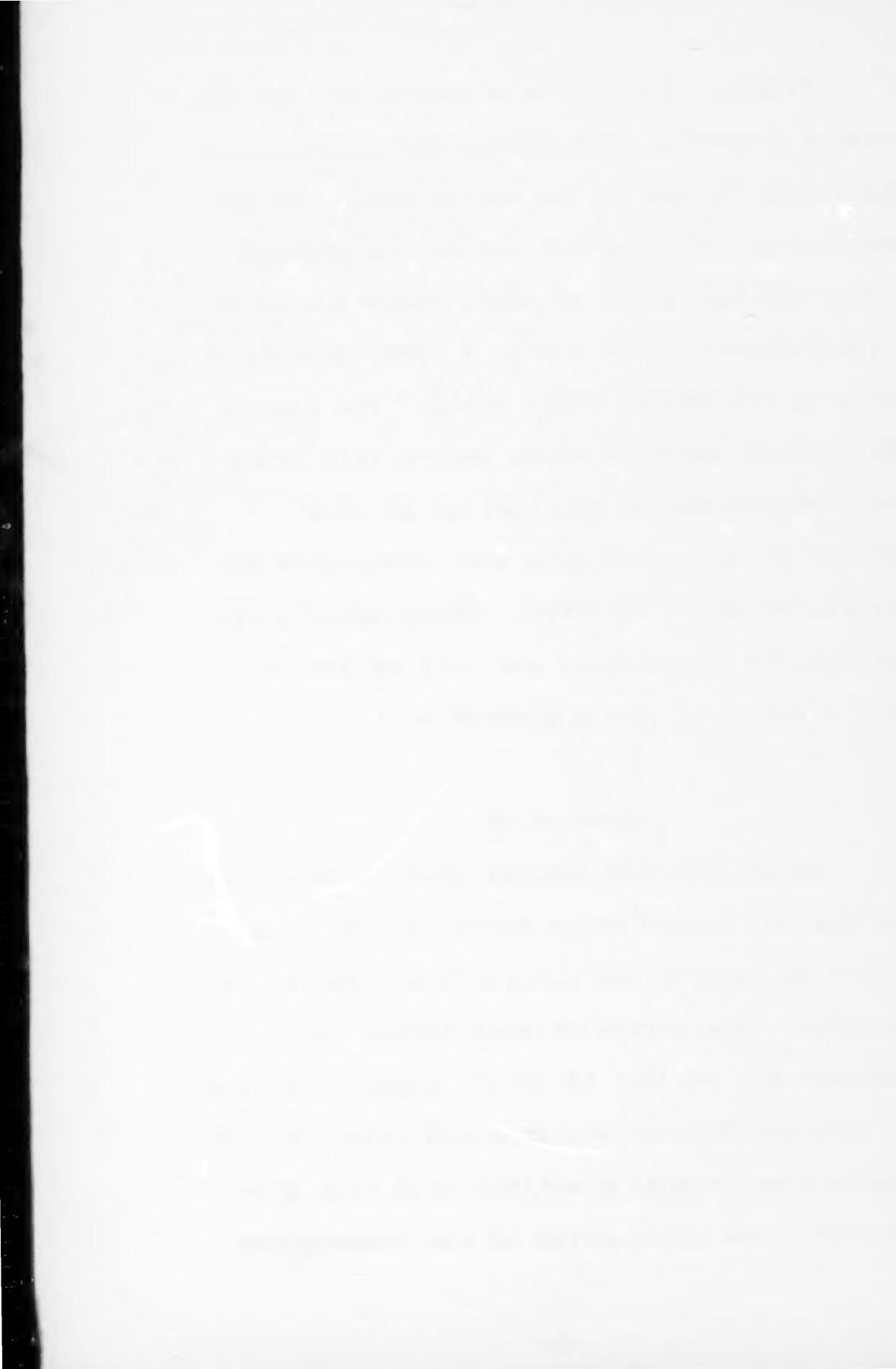
White Mountain Apache Tribe v. Arizona, 649 F.2d 1274 (9th Cir., 1981). This court is obliged to defer to this state court pronouncement of state law. Erie Railroad Company v. Tompkins, 304 U.S. 64 (1938).



Finally, Petitioner's assertion that the issues presented have widespread application to Indian Tribes of the United States is unwarranted. The application of the express Congressional grant of state court jurisdiction pursuant to 25 U.S.C. § 1300f extends only to the Pascua Yaqui Tribe. The issues Petitioner seeks to place before this court have absolutely no application to other Indian Tribes which have been recognized by treaty or other statutes. These matters are of limited application and fail to justify the issuance of the requested writ.

CONCLUSION

Petitioner has demonstrated no important or special reason which would justify this court in issuing the extraordinary relief requested. The jurisdictional issues in this lawsuit are subject to clear, unequivocal and consistent federal statutes and case law. No unresolved federal questions have been presented. The application of the unambiguous

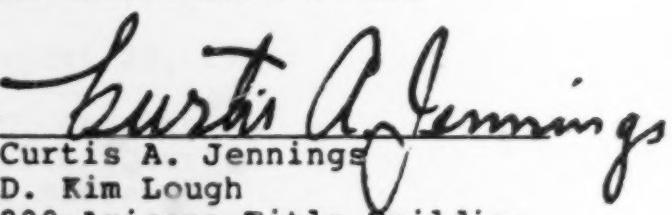


federal statutes in question is limited to a single tribe and has no widespread concern or national interest. Accordingly, the petition should be denied.

RESPECTFULLY SUBMITTED this 23rd day of August, 1984.

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By


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Certificate of Service

I, Curtis A. Jennings, hereby certify
that the below named parties were served with
the foregoing Opposition pursuant to the
requirements of Rules 28.3 and 28.5(b), Rules
of the Supreme Court, by first class, United
States Mail on August 23, 1984:

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